



Texas Board of Chiropractic Examiners

Thursday, August 19, 2021

BOARD MEETING: 9:04 A.M. – Final Adjournment at 12:40 P.M.

Texas Alcoholic Beverage Commission Headquarters
5806 Mesa Drive
Austin, Texas 78731

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners (Board) met on August 19, 2021, to consider and act as necessary on matters within the jurisdiction of the Board, which are listed on the agenda established for this meeting.

1. Call to Order and Roll Call:

Action Taken: Board President Dr. Mark Bronson called the meeting to order at 9:04 A.M. Board Secretary Dr. Scott Wofford called the roll.

Present Members:

Dr. Mark Bronson
Dr. Michael Henry
Ms. Sarah Abraham, Ph.D.
Dr. Nicholas Baucum
Dr. Mindy Neal
Dr. Debra White
Dr. Scott Wofford

Absent Members:

Mr. Brandon Allen
Ms. Ebony Todd, J.D.

Board Staff Present:

Patrick Fortner, Executive Director
Christopher Burnett, General Counsel
Jennifer Hertsenberg, Director of Operations
Sarah Matthews, Director of Licensing
Norma Rodriguez, Director of Enforcement
Joseph McLaughlin, Staff Attorney

Action Taken: HENRY MOVED and WOFFORD SECONDED to excuse Ms. Todd's absence. The Board **APPROVED** the motion unanimously.



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Seven of the nine Board members were present and Dr. Bronson announced that a quorum was established.

2. Discussion and approval of the minutes for the Board meeting held on March 11, 2021:

Action Taken: HENRY MOVED and WOFFORD SECONDED to approve the minutes from the March 11, 2021 Board meeting. The Board **APPROVED** the motion unanimously.

3. Election of Board vice-president and secretary-treasurer, pursuant to Texas Occupations Code §201.055:

Dr. Bronson opened the floor for nominations for vice president.

Action Taken: WOFFORD NOMINATED Dr. Henry for the position, and HENRY ACCEPTED. Dr. Bronson asked three times for any other nominations. There were none. The Board **APPROVED** the motion unanimously.

Next, Dr. Bronson opened the floor for nominations for secretary-treasurer.

Action Taken: WHITE NOMINATED Dr. Wofford for the position, and WOFFORD ACCEPTED. Dr. Bronson asked three times for any other nominations. There were none. The Board **APPROVED** the motion unanimously.

4. President's Report:

Dr. Bronson began by thanking everyone for their presence at the meeting during the pandemic.

Dr. Bronson then discussed recent activities of the Board:

- Over the course of the pandemic, Dr. Bronson maintained correspondence and involvement as the Board's representative with the National Board of Chiropractic Examiners (NBCE) and Federation of Chiropractic Licensing Boards (FCLB). He remained actively involved with the NBCE as a chief examiner for the Part 4 Examinations and as the Board's delegate to the NBCE. He also remained actively involved with the FCLB's PACE program to review and audit continuing education courses, and served on the FCLB's finance and audit committee.
- On April 22, 2021, the FCLB hosted an open forum for resolution authors. Dr. Bronson attended and answered questions about his nerves-in-chiropractic resolution.
- On May 1, 2021, Dr. Bronson attended the FCLB's annual congress and educational seminar by virtual format as the Board's delegate. The nerves-in-chiropractic resolution was passed to serve as a guide for other organizations to use.
- On May 14 to May 16, 2021, Dr. Bronson served as chief examiner and Dr. Baucum and Dr. Wofford served as examiners at the NBCE Part 4 Examinations at Parker University in Dallas, Texas.
- On June 11 and June 12, 2021, Dr. Baucum traveled to Greeley, Colorado, for the NBCE Part 4 Examination committee meeting.

- On June 18, 2021, the Board received a public information request for documents relating to the Board's participation in resolutions adopted by the FCLB at the annual congress.

Dr. Bronson then announced future events:

- On September 24-26, 2021, Dr. Bronson will attend the FCLB's district conference and roundtable workshop in Florida.
- Dr. Bronson then asked the Board to vote to approve his attendance:

Action Taken: WOFFORD **MOVED** and NEAL **SECONDED** to approve Dr. Bronson's attendance as the Board's representative to the FCLB's district conference and roundtable. The Board **APPROVED** the motion unanimously.

- Dr. Bronson noted that other Board members and staff are also allowed to attend these conferences.
- On November 12-14, the fall 2021 NBCE Part 4 Examinations will be held at Parker University in Dallas, Texas. Dr. Bronson will serve as chief examiner and Dr. White will participate as an examiner. Their participation will be at no expense to the agency. Dr. Bronson then entertained a motion for Dr. White to serve:

Action Taken: WOFFORD **MOVED** and BAUCUM **SECONDED** to approve Dr. White's participation as an examiner at the fall 2021 NBCE Part 4 Examinations. The Board **APPROVED** the motion unanimously.

5. Board Committee Reports:

a. Rules Committee

- Dr. Henry reported that despite the disruptions caused by the ransomware attack, there were no pending rules that needed to be re-proposed.
- The Board did need to delay its stakeholder meeting regarding a potential new business model rule proposal. He believed it would again be considered later this year or early next year.

b. Enforcement Committee

- Dr. Baucum reported that the EC met the day before to discuss 15 cases for directives to enforcement staff.
- He also noted that the committee discussed the potential for a delegation of authority to staff to resolve small cases through the use of administrative tickets. Mr. McLaughlin discussed some of staff's input as to how the idea came about. Mr. Burnett explained that it would require an official board action to delegate the authority to staff, which could be considered at a later meeting. Dr. Baucum reiterated the Enforcement Committee's support for the idea. Dr. Henry requested a detailed proposal from staff as well as stakeholder input. Ms. Rodriguez discussed her experience with previous similar systems at other agencies.

c. Education Standards Committee

- Dr. White reported that three continuing education (CE) courses were reviewed by the committee. Two received full approval and one received partial approval.
- Dr. Bronson asked Dr. White if there were any issues with approving CE courses that presented subject matter outside the scope of chiropractic. Dr. White reported that the committee anticipated seeing an increase in requests after the recent scope of practice lawsuit was resolved but that has not yet materialized.

d. Licensing Committee

- Ms. Todd's absence was excused and no report was made.

6. Executive Director and Staff Reports:

a. Executive Director

- Mr. Fortner began by thanking the TABC for allowing the Board to use its space. He then reported that two new positions have been posted for enforcement staff, and that since the Board brought on a part time investigator, case closures have significantly increased.
- The Board's expenditures on the database project are being fully refunded. Mr. Fortner explained that the new vendor works primarily with the Board's Filemaker database, and he was confident the conversion would work well. He anticipated that the updated versions would involve a web interface for licensees to use.
- Mr. Fortner reported that the new Jurisprudence Examination would be going online September 1, 2021. He thanked Board staff for their work in updating it.
- Mr. Fortner concluded by explaining that the Board is continuing to seek additional outreach opportunities with the state's chiropractic colleges and licensee community.

b. Director of Operations

- Ms. Hertsenberg discussed the financial report for Fiscal Year (FY) 2021 up to July, 2021. She noted that funds were currently being encumbered for the database project.

c. Director of Licensing

- Ms. Matthews presented the licensing report comparing the third quarters of FY21 and FY 2020.

d. Director of Enforcement

- Ms. Rodriguez reported that 74 cases had been closed in the last reporting period with 150 cases currently pending, and that a case had been closed every 2.5 days on average during the reporting period.
- Dr. Baucum noted that the EC had seen an increase in sexual misconduct complaints. He explained that the committee wanted to be proactive about educating the licensee community about increased societal sensitivity to boundary issues and how to avoid complaints. He noted that lack of communication between doctor and patient during

treatment was a primary concern, and that the committee's primary motivation was to help avoid complaints being filed against licensees in the first place.

At this time, Dr. Bronson allowed for a short break and then noted the board would move directly into Agenda Item 21 for legal counsel.

Action Taken: At 9:53 A.M., Dr. Bronson allowed for a short break.

21. Closed Session:

Action Taken: The Board entered a closed session pursuant to Texas Government Code §551.071 to receive updates from legal counsel concerning litigation from 10:03 A.M. until 10:12 A.M. All others present left the meeting room.

Action Taken: Dr. Bronson reconvened the open meeting at 10:14 A.M.

7. Public Comment:

There were no public comments.

8. Discussion and action on whether the Board will consider HHSC-approved human trafficking courses for continuing education credit and license renewal if the course provider has applied with (and has been approved by) the Board as a continuing education sponsor before offering the course to the Board's licensees:

Ms. Hertsenberg explained the origin of the legislative requirement for HHSC-approved human trafficking training. She then explained that the Board currently had an approved CE provider seeking Board accreditation for his HHSC-approved course so licensees could apply the hour toward their yearly CE requirements while also satisfying the legislative requirement.

Action Taken: **WHITE MOVED** and **BAUCUM SECONDED** to direct staff to approve the application and future similar applications for CE approval. The Board **APPROVED** the motion unanimously.

6. Executive Director and Staff Reports:

d. Director of Enforcement

Dr. Henry asked a question about complaints filed against licensees working for franchises. That report was provided to Dr. Bronson and would be disseminated to Board members. He then asked a question about complaints against chiropractors being forwarded to the Board by the Texas Medical Board. Ms. Rodriguez explained that relationship and Dr. Henry requested Mr. Fortner address it if need be.

9. Discussion of the range of authority of chiropractors to delegate certain acts under Texas Occupations Code §201.451:

Dr. Bronson introduced this item and the following three items as opportunities for the Board to discuss certain topics of interest to the licensee community to hopefully clarify certain areas of confusion.

Mr. Burnett then provided a detailed explanation of the legal authority for licensees to delegate acts. He noted that there is a statutory requirement that the Board adopt rules regulating delegation by licensees. This authority to the Board is quite broad. Ultimately, licensees retain all responsibility for the results of delegated actions.

He then described the various Board rules that address licensees' ability to delegate.

10. Discussion of the diagnosis and treatment of pain within the chiropractic scope of practice:

This item was bypassed due to the presenting party being unable to attend.

11. Discussion of the possible amendment of 22 TAC §78.1 (Scope of Practice):

Mr. Burnett explained that this item needed to be discussed before an amendment was proposed due to the substantial public interest any proposal would generate. He noted that the rule has not been updated due to the recent years' long litigation that was just concluded, and the rule has not been amended since 2015. Now that the litigation has been resolved, it is time for an update.

Mr. Burnett and Dr. Henry stressed that there would not be any substantive changes to the chiropractic scope of practice. Any proposal would be for the purpose of cleaning up the language and clarifying the existing scope of practice.

Mr. Burnett also went into some detail about the agency's requirement that it periodically review rules and how the recent reorganization and rewrite of the rules satisfied the majority of that requirement.

12. Discussion of the requirement to differentiate a chiropractic office or clinic from another business or enterprise contained in Texas Occupations Code §201.502(a)(19) and its relation to other law:

Mr. Burnett introduced this item by explaining that there was a minor conflict between this statutory provision and recent amendments to the Texas Business Code allowing for multi-disciplinary healthcare practices.

Ms. Rodriguez explained some of the scenarios the enforcement division had encountered that implicated this provision.

Dr. Henry suggested that enforcement simply refrain from disciplining under this statutory provision because these violations are typically also violations of the scope of practice rule, which licensees are directly responsible for complying with.

Ms. Abraham asked a clarifying question about a chiropractor's ability to hire other professionals.

13. Discussion and action on requests to sit for the Texas Jurisprudence Examination pursuant to Texas Occupations Code §201.304(a)(2):

a. Todd Erickson

The staff recommendation was to allow the applicant to sit for the Texas Jurisprudence Examination after taking and passing the NBCE's Special Purposes Examination for Chiropractors (SPEC) at his expense.

Action Taken: HENRY MOVED and NEAL SECONDED to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

b. Catherine Garrett

The staff recommendation was to allow the applicant to sit for the Texas Jurisprudence Examination after taking and passing SPEC at her expense.

Action Taken: BAUCUM MOVED and HENRY SECONDED to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

c. Forrest Voss

The staff recommendation was to allow the applicant to sit for the Texas Jurisprudence Examination after taking and passing SPEC at his expense.

Action Taken: WOFFORD MOVED and HENRY SECONDED to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

d. Benjamin Karis

The staff recommendation was to allow the applicant to sit for the Texas Jurisprudence Examination without any stipulations.

Action Taken: HENRY MOVED and WOFFORD SECONDED to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

e. Gonzalo Perla

The staff recommendation was to allow the applicant to sit for the Texas Jurisprudence Examination without any stipulations.

Action Taken: WHITE MOVED and BAUCUM SECONDED to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

f. Nicholas Nolen

The staff recommendation was to allow the applicant to sit for the Texas Jurisprudence Examination and then that the license be issued in probationary status for two years with required testing for controlled substances.

The applicant was invited to speak before the Board. After discussion, Dr. Henry suggested that the recommendation for controlled substances testing be removed. The probation would be revocable upon conviction for a crime.

Action Taken: HENRY MOVED and BAUCUM SECONDED to accept the staff recommendation with the discussed changes. The Board **APPROVED** the motion unanimously.

a. Todd Erickson

The applicant requested an opportunity to discuss his stipulation with the Board.

14. Discussion and action on proposed cease and desist orders pursuant to Texas Occupations Code §201.6015 and Texas Government Code §2001.056:

a. Francisco Flores, unlicensed, TBCE Case No. 2020-146

The staff recommendation was that the Board approve the cease and desist order.

Action Taken: HENRY MOVED and WOFFORD SECONDED to approve the cease and desist order. The Board **APPROVED** the motion unanimously.

15. Discussion and action on proposed agreed orders pursuant to Texas Occupations Code §201.504(a)(1):

a. Don Allen Salyer, License No. 6176, TBCE Case No. 2018-189

The staff recommendation was that the Board approve the agreed order.

Action Taken: NEAL MOVED and BAUCUM SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

b. Clayton Allan Hansen, License No. 11629, TBCE Case No. 2018-190

The staff recommendation was that the Board approve the agreed order.

Action Taken: HENRY MOVED and WOFFORD SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

c. Louis Huy-Anh Bui, License No. 13035, TBCE Case No. 2019-067

The staff recommendation was that the Board approve the agreed order.

Action Taken: HENRY MOVED and WHITE SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

d. Christopher W. Turner, License No. 8989, TBCE Case No. 2019-076

The staff recommendation was that the Board approve the agreed order.

Action Taken: NEAL **MOVED** and BAUCUM **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

e. Daniel Garcia, License No. 9939, TBCE Case No. 2019-106

Mr. McLaughlin announced that this item would need to be tabled until the next Board meeting.

f. Jay W. Ferguson, License No. 10367, TBCE Case No. 2019-177

The staff recommendation was that the Board approve the agreed order.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

g. Jafar Nassiri, License No. 6463, TBCE Case No. 2019-257

The staff recommendation was that the Board approve the agreed order.

Action Taken: WOFFORD **MOVED** and BAUCUM **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

h. Brian L. Hooten, License No. 8772, TBCE Case No. 2019-278

The staff recommendation was that the Board approve the agreed order.

Action Taken: BAUCUM **MOVED** and WHITE **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

i. Peter Thomas Gonyeau, License No. 11117, TBCE Case No. 2019-297

The staff recommendation was that the Board approve the agreed order.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

j. Micah Wynn Pittman, License No. 13544, TBCE Case No. 2020-015

The staff recommendation was that the Board approve the agreed order.

Action Taken: ABRAHAM **MOVED** and WHITE **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

k. Krystal Jasmine Barnett, License No. 2020-046, TBCE Case No. 2020-046

Mr. McLaughlin announced that this item would need to be tabled until the next Board meeting.

Action Taken: At 11:28 A.M., Dr. Bronson allowed for a short break.

Action Taken: At 11:41 A.M., Dr. Bronson reconvened the meeting

16. Discussion and action on required suspension or revocation of licenses for certain offenses pursuant to Texas Occupations Code §201.5065:

a. David Gosalvez, III, License No. 12099, TBCE Case No. 2021-048

Action Taken: WOFFORD **MOVED** and NEAL **SECONDED** to approve the revocation of the license. The Board **APPROVED** the motion unanimously.

17. Discussion and action on proposing the repeal and replacement of 22 TAC §72.18 (Criminal History):

Mr. Burnett introduced this item and the next three by explaining that repeal and replacement of these rules would satisfy the mandatory agency review of rules. The proposed repeals and replacements would also be accompanied by proposed new rules splitting certain language out into new rules to make them more visible to licensees.

The staff recommendation was for the Board to propose the repeal and replacement as discussed.

Action Taken: HENRY **MOVED** and WHITE **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §72.18 as discussed. The Board **APPROVED** the motion unanimously.

18. Discussion and action on proposing a new Board rule, 22 TAC §72.19 (Requirement to Report a Conviction or Deferred Adjudication):

The staff recommendation was for the Board to propose the new rule as discussed.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to propose the new rule 22 Texas Administrative Code §72.19 as discussed. The Board **APPROVED** the motion unanimously.

19. Discussion and action on proposing the repeal and replacement of 22 TAC §77.1 (Advertising and Public Communication):

The staff recommendation was for the Board to propose the repeal and replacement as discussed.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §77.1 as discussed. The Board **APPROVED** the motion unanimously.

20. Discussion and action on proposing a new Board rule, 22 TAC §77.3 (Use of D.C. and Similar Terms):

The staff recommendation was for the Board to propose the new rule as discussed.

Action Taken: HENRY **MOVED** and WHITE **SECONDED** to propose the new rule 22 Texas Administrative Code §77.3 as discussed. The Board **APPROVED** the motion unanimously.

21. Closed Session:

Action Taken: The Board entered a closed session pursuant to Texas Government Code §551.071 to receive ethics training from 11:56 A.M. until 12:33 P.M. All others present left the meeting room.

Action Taken: Dr. Bronson reconvened the open meeting at 12:37 P.M.

22. Discussion of any matters discussed in Closed Session under Agenda Item 21:

Nothing was discussed.

23. Requests from Board members for future agenda items:

Dr. Henry requested a proposal from staff regarding the enforcement ticket.

Dr. Bronson proposed the next meeting be held on November 18, 2021.

24. Adjournment:

Action Taken: **WOFFORD MOVED and BAUCUM SECONDED** to adjourn the meeting at 12:40 P.M. The Board **APPROVED** the motion unanimously.

STATEMENT: I affirm that the above is a true and correct rendering of the minutes for the Texas Board of Chiropractic Examiners Board Meeting held on the above date. The minutes from the Board Meeting held on March 11, 2021, were **APPROVED** by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held on August 19, 2021.



August 20, 2021

Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners

Date